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EXAMINER

THOMPSON, HUGH B

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3634

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/776,845
Filing Date: February 11, 2004
Appellant(s): WOLLER ET AL.

Michelle E. Kandcer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10-6-06 appealing from the Office action mailed 7-10-06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,971,104 Woller 10-1999

Wikipedia, the free encyclopedia--Internet website: definition of "synthetic polymer"

http://en.wikipedia.org/wiki/Synthetic_polymer, (7-6-05);

Webster's Dictionary 10th Edition: definitions of "rigid" and "stiff"

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-9, 11, 13-15, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Woller #5,971,104. Woller, as recited in column 7, lines 26-47, discloses a pair of foot engaging members/straps (stirrups) 96, secured to support members/arms 74 of platform assembly 26, 70, by means of fasteners, i.e., at a mounting portion, the straps having a curved configuration (front and tail) depending toward the platform 26, the straps also being made of

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stiff/*rigid* materials causing them to stand up and fabricated from synthetic polymers, i.e., a wide array of plastics.

Allowable Subject Matter

Claims 10 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The primary reason for the allowable subject matter of claim 10 is the inclusion of clamping portions attached to the support arms. For claim 16, it is the inclusion of the devices attached to the support arms and extending toward the platform.

(10) Response to Argument

Claims 1-3 and 6-7, Claim 5, Claims 8-11, Claim 13, Claims 14-17, Claim 19

Woller-104, as recited in column 7, lines 41-47, clearly states that the stirrups/straps 96 (clearly shown as curved in the Figures) are made of synthetic polymers, not limited to, i.e., nylon, having a certain “stiffness that causes the strap to stand up...” Woller goes on to recite that other materials, among those being synthetic polymers, can also be used for the foot straps. In lines 33-40, Woller also recites that “the straps can be adjusted on a more permanent basis”, this being achieved by attachment points that may be “screws or other threaded fasteners”.

To one of ordinary skill in the art, these disclose preferences and alternatives taken together suggest that a foot strap may be made of a synthetic polymer, fixed relative to the platform, and certainly possess a stiffness that allows the strap to receive or engage a user’s foot. Claims 1, 8, and 14 as presented, in no way preclude the Woller- reference from anticipating a

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foot engaging member having a mounting portion (interpreted as a fixed end) and a rigid tail portion having a curved elongate body extending away from the mounting portion.

Note that the applicant argues on page 6 of the Appeal Brief that the “Woller discloses foot engaging members that are a pair of stiff, flexible straps which are not rigid.” Nowhere in Woller-104 is there a combination of terms or phrases that are synonymous with “stiff, flexible straps, which are not rigid.” Were such a combination of phrases or terms clearly disclosed in the reference, they would in the Examiner’s opinion, present an ambiguity reducing the likelihood of the reference being used as a anticipatory reference.

The Examiner also looked to the Specification to find any statement as to the importance of rigidity of the foot engaging member/pair or rigid footholds. In paragraph 4, line 8, of the specification, the applicants recite that the devices are “*substantially rigid*”, a phrase that on its face suggests to one of ordinary skill in the art something less than or not quite rigid. Finally, in paragraph 21 of the specification, the applicants disclose that portions of the foothold can “comprise a *molded plastic* body”. Given these admissions on the part of the applicants, it is reasonable to conclude that the Examiner’s reading of the following is acceptable.

Webster’s 10th edition, among other definitions, defines the term “stiff” as synonymous with the term “rigid”. The term “rigid”, among other definitions, is defined as “appearing stiff...” Further, synthetic polymers, as defined by “Wikipedia”, an on-line encyclopedia, are plastics that include, amongst other types, *molded plastics* such as PVC. As such, the term “rigid” in the independent claims, fails to further distinguish the instant invention from Woller-104. The applicants’ clearly attempt to define the foot-engaging member of the instant invention over Woller-104 by reciting a *material property, i.e., “rigid”* versus a structural limitation such

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as *"a curved member pivotally attached to a support member that receives and secures a foot of a user thereof in a locked or use position."* Absent additional claim language drawn to the structure or attachment of the stirrup relative to the platform, the Woller-104 reference "reads-on" the claim language as here presented.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

 Hugh B. Thompson II

Primary Examiner

Conferees:

 Richard Chilcot SPE-3634 (at the time of conference)

 Peter Cuomo SPE-3634(as of 1st qtr FY-2007)